

# Plantation Justice.

Shewing the

Constitution of their Courts,  
and what sort of Judges they  
have in them.

By which Merchants may see the occasions of  
their great Losses and Sufferings in the  
Plantation Trade : Lawyers may see such  
a Model of Justice as they could not have  
thought of ; and Others may see how those  
Parts of the World are governed.

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The Second Edition.

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L O N D O N.

Printed, and sold by B. Barker in Westminster-Hall,  
B. Lintot at the Middle Temple-Gate in Fleetstreet, and  
J. Billingsley under the Piazza of the Royal Exchange.

1702.

Price 3d.

# Journal of the

1871/12/2

Constitution of their Courts  
and what sort of Judges they  
have in them

By which Ministers may let see how good  
they are in their own  
Plans and Ends: I say Ministers, who  
a kind of Justice as they could not have  
thought of, and I say how those  
Principles of the World are governed

Printed and sold by J. G. Smith in Westminster  
at the Middle Temple Gate in Fleet Street  
and at the ...



*The Present State of Justice in the  
American Plantations, and par-  
ticularly in the Island of Barba-  
dos; which being the best model'd  
of the Plantations, the Condition  
of the rest may be thereby con-  
jectured.*

**O**N the first Settlement of the Plantations the Inhabitants were few, and found their mutual Interest in a good Correspondence; and when any Controversy hapned amongst them (which was but seldom) it was decided in a summary way by some of the principal among them, who were thereunto commissioned by the King. Under this Administration they continued some Years; and being thereby under no Necessity of spending much time in Litigating, they could the better attend their several Trades and Plantations.

But in process of time, as the Plantations and their Trade increased, Controversies multiplied, and some Cases were found too intricate to be decided in a summary way: Whereupon Courts were erected in imitation of those in England. This in the Island of Barbados was done in the Year 1661. by an Act of the Governour, Council, and Assembly of that Island: The Island was divided into five Precincts, and it was de-

clared that each Precinct should have a Court of Common Pleas, consisting of a Judge, and four Assistants, ~~who were to be appointed by Commission under the Hand and Seal of the Governour, giving them, or any three of them, power to determine all Civil Causes in their several Precincts; the said Commissions to continue during the Pleasure only of the Governour.~~ An other such Act was made, declaring *the Governour and Council to have the whole Power of Petitions in equitable Causes, and to hear and determine all Writs of Error.*

*These are the words of the Act.*

Under this Model the Administration of Justice was at first much more tolerable than after the same had some continuance, because Suits were in the beginning fewer, and less intricate; the Forms used both in Law and Equity were plain and short; Niceties in pleading were neither understood nor attempted among them: by their natural Reason only, those Judges and their Assistants did commonly guess at the right of a Cause, and the Matters then controverted were seldom so considerable as to give a sufficient Temptation to injustice; and if wrong were done to any, it was their good fortune to have it done soon, and without that great expence of Money and Time (as at present is used there) by which such a misfortune is doubled; it being certain that in many Cases speedy Injustice is less grievous than dilatory Justice.

*There were lately above a thousand Causes depending at one time in the Courts of that Island, and some of them for above ten thousand Pounds.*

But as Suits grew more numerous and important, incouraged by Profit, and compelled by Necessity, many Clerks, and other such small dealers in the Law, went thither from England, who tho ignorant of the Law, yet had so much knowledg of the Forms, as to be able to perplex, delay, and confound all the Business of the Courts there; by reason that the Judges there, and their Assistants were wholly ignorant of the Forms, as well as of the Law it self, and thereby incapable of regulating the said Disorders, which multiplied, and do still multiply every day: Nor can any other be expected of the Judges and their Assistants, who always were,

and



and still are made of the Planters, Merchants, Custom-house Officers, Shopkeepers, or other Inhabitants of the Island, who were never bred to, or otherwise versed in the Law. From hence proceeds the Custom in that Island, to influence their Courts by the written Opinions of Council sent over out of *England*; and the Custom, that if any Authority of Law be urged to the Court, out of a Latin or French Book, an Interpreter is immediately sworn to interpret the same to the Judge and his Assistants.

*This Rule may have some Exceptions.*

One reason why they are no better furnished with Judges is, That no Salaries are allowed them, only some small Perquisites; insomuch, that the place of Provost-Marshal, or Jaylor of the Island, is esteemed to be worth more than the income of all the said Judges put together. Another reason is, because they hold their Places during the pleasure only of the Governour. Those Places therefore being so precarious and unprofitable, the meanest Clerk that goes over will not accept of them, but chuses to depend on the certainty of his own Practice.

*Which Perquisites may be increased by delaying Causes, or diminished by dispatch of them.*

Writs of Error on Judgments given by those Judges, are brought before the Governour and Council, who in the said Island are called the Court of Errors: This Council consists of twelve Gentlemen of the Island, who decide, by majority of Votes, all the Business of this Court, as well as of the *Chancery*. But how worthy soever they may be in other respects, they cannot be proper and fit Judges in such Cases where the greatest Niceties of Law are handled, unless they had some knowledg of the Rules by which they are to proceed; for want of which infinite Hardships have been suffered, and many gross and most unwarrantable Judgments have been (without any colour of Law) there given, to the great Oppression of his Majesty's Subjects, as in many instances may appear. One Person has lately lost above five thousand nine hundred Pounds by such a Judgment in that Island, tho the same has been since reversed by his Majesty in Council; some of the

*No Error lies under 300 l. value, by the Governor's Instructions.*

*Most of these are interested in many Suits depending in the Courts where they sit Judges.*

Defendants dying during the dependance of the Appeal, and their Estates descending according to former Settlements ; others have imbezeled, or so covered their Estates, that he has now lost not only his Debt, but likewise all the Charge and Trouble of many Years Suit, and of bringing his Cause by Appeal from thence to *England*.

*No Appeal is allowed, unless the Sum or Value appeal'd for exceeds 500l. and the Appeal be made within fourteen days after Sentence, which is frequently impossible.*

It is the happiness of his Majesty's Subjects, that such Judgments and Decrees in that Island are not final, and that Persons grieved may have relief by Appeal to his Majesty in Council : Yet when it is considered, that in regard of the great distance of the said Island, and the great Charge, Delay, and Trouble of such long Voyages, the Remedy which Persons grieved have by Appeal, is in small Causes (and if often repeated in great ones) almost as grievous as it would be to suffer under such Injustice ; there seems to be a much greater Necessity for a due and regular Administration of Justice in the Plantations, than there would be if they were nearer to the Place to which they are to appeal.

And whereas the Governours of that Island (as in the other Plantations) are both Chancellor and Chief Justice, it is a great Misfortune to the People there, and to all others who deal with them, that the same Commission which gives them their Power, cannot give them some Skill for the Execution of so great a Trust as is thereby reposed in them ; by which they would be inabled to administer Justice in their own Courts, and regulate the Proceedings of inferior Courts, which are under their Inspection. But the said Governours being usually unacquainted with the Rules of Law, and altogether Strangers to the Forms thereof, are forced to direct all their Proceedings by the Advice of some Person in the Island professing the Law, who is usually called *Attorney*, or *Solicitor-General*, who seldom fails of being concerned of one side in the Cause, and therefore cannot be supposed a proper Director of the supream Justice of the Island ; but the Governours cannot avoid it, being put upon Business which it is impossible



possible for them (of themselves) to understand.

It may deserve Consideration, whether in so small an Island, the number of Thirty nine of the Inhabitants at one time in judicial Places, does not introduce many Partialities, especially where Suits are carried on for Inhabitants of *England*, against those in the Plantations; and whether the Acts of Trade and Navigation are like to be best executed to the Advantage of *England* under such a Model, since the Planters generally think it their Right, as well as their Interest, to evade those Laws.

The Custom of making yearly Presents to the Governours by the Assembly, amounting commonly to two thousand Pounds a Year, sometimes more, and this raised by an Excise on Liquors imported into that Island by *English* Merchants, may likewise deserve Consideration; and whether it would not conduce more to his Majesty's Service, and the good of his People, that the Profits of all Plantation-Governments were made more certain: The present practice having been found by Experience to produce many Partialities, and other Irregularities, disadvantageous to his Majesty, and extremely prejudicial to many of his People; for the Plantation-Inhabitants are always indebted to those of *England*, and the latter are much mistaken if such large Presents made by their Debtors, do not conduce much to the difficulty they find in recovering their just Debts. And whether the Acts of Trade and Navigation are not the worse executed in some Colonies, in regard of such Presents, may be worthy inquiry.

*At the same time these Presents are given, the King is importuned by Petitions in England, to consider the sad and defenceless Condition of the Island for want of Money to repair their Fortifications, and supply their Magazines.*

*Governors of small Places, when justly complained of, are sometimes turned out with disgrace; but against the greater Governors, who receive large Presents, and are able to give the like, it is commonly in vain to complain.*

It may likewise deserve Consideration, Whether the Measures of Government, and Administration of Justice used in the Plantations at their first Settlements, when they were but thin of People, and of little importance to this Nation, are fit to be still continued, when they make so considerable a part of his Majesty's Dominion, the small Island of *Barbados* alone (about twenty five Miles long, and half so broad) by a reasonable Computation produce to *England* in its Trade.

Trade above five hundred thousand Pounds *per Annum*, one Year with another, to his Majesty ; by Customs in *England* about 70000 *l. per Annum*, and by the Duty of four and a half *per Cent.* (as paid in the Island) about 1000 *l. per Annum*, besides the great number of Ships they employ, and many thousands of hands in English Manufactures.

The Plantation Trade is now acknowledged to be the most advantageous this Nation enjoys ; and it is no less certain that the prosperity thereof depends in a great measure on the good Government of the Plantations, and regular Administration of Justice there. It would seem then very strange, if when such diligence is used in all other parts of his Majesty's Service, that in the meanest and most mechanick part thereof no Man is employ'd to do any thing to which he was not bred, or which there is not reasonable ground to believe he understands, the Administration of Justice in the Plantations should be thought the easiest part of his Service, which any one may perform, and on the miscarriage of which little depends.

It has been hitherto the principal Objection against any regulation of Justice in the Plantations, that they were first peopled, and continue still to be supplied by numbers of indigent persons who escape thither to be easy from their Creditors ; that the difficulty of having Justice in the Courts there, is their chief Security, and that if they do not find such Protection there, it will ruin the Plantations.

To this it is answered, That the arbitrary Government in the Plantations does hinder many Persons from going thither, or staying when they are there : And tho' it may be reasonable perhaps by an express Law, to exempt all Persons from Imprisonment in the Plantations, or to give them other certain and known Privileges, who are employed in planting, or other bodily Labour, or who have not sufficient to answer their Creditors ; yet to continue a most corrupt and dilatory Course of Justice, on pretence of favouring such



such poor Debtors, and thereby to exempt those of great Estates (several Planters having now two or three thousand Pounds *per Annum*) from Law and Justice, is so far from encouraging the Plantation Trade, that no one thing does contribute more to the discouragement thereof. On the first Settlement of the Plantations, particularly in the Island of *Barbados*, they planted Tobacco, Ginger, and Cotton; and then any Man that had Instruments for digging and clearing the Ground, could manage a small Plantation himself, without any Stock or other help; and then a Relaxation of Justice might be some incouragement to carry such People thither: But since the setting up of Sugar-works in that Island (about fifty Years since) the planting of Tobacco, Cotton, and Ginger, is in a great measure disused as unprofitable, and no Sugar-work can be managed without a considerable Stock: Such a Work with Negroes, and other things sufficient to employ one Windmil only (which is the smallest sort of Sugar-work) will not cost much less than 5000 *l.* Sterling. Since therefore the Plantation of Sugar cannot be managed without employing great Sums therein, whatsoever is done to secure the certain possession of Purchasers, or reimbursements of Sums advanced by Adventurers, would best promote that Trade, which like all others, must in a great measure be carried on by Credit; for want of which Security nothing is more evident, than that the Plantation Trade has suffered more than it did even by the double Imposition formerly laid on their Sugar in *England*: for the Planters wanting necessary Credit in *England* for carrying on their Trade, where they are trusted, they are now made to pay very dear for it, because of the great difficulty of having Justice against them, if they fail of payment. Several *English* Merchants have heretofore employed great Sums on Plantations in that Island, but many of them have been great Sufferers, and many others ruined for want of Justice in the Island; and the Children of others after their Parents death, ha-

*The truth of this is known to all Merchants that have traded to those Places.*

ving been miserably used there, and defrauded of great Estates (insomuch that few Instances can be given, where Children under Age have not been so used there) the Merchants of *England* are grown too cautious to venture much in a Trade, which for want of Justice proves so pernicious to them: Whereas if Justice was strictly administered there, great Sums would be employed in so beneficial a Trade, to the great Advantage of this Nation. And tho it may seem incredible to those who are not rightly informed, nothing is more certain than that the English Merchants find more security, and better and more speedy Justice in the most distant Provinces of the *Ottoman* Dominions from their *Bashaws*, than they do in some of the *American* Colonies, tho under the Dominion of their own Prince; and of this the Merchants are so sensible, that they will trade to the first for a much less Profit than to the last. Whether this ought to be reformed, is submitted to those whose Province it is to judg of it.

When the Laws, not only of *England*, but of all Nations, agree in giving more speedy Justice in matters of Trade, than in any other, and that with design to advance Traffick, it is very strange that it should now be thought of ill Consequence to the Plantation-Trade.

It is grown a Proverb with the English Merchants, that tho a Man goes over never so honest to the Plantations, yet the very Air there does change him in a short time: And it is certain they have too much ground to complain of the universal Corruption of Justice among them; for the Judicature of that small Place being in the hands of thirty seven of the Inhabitants, it introduces many Partialities, &c. for there can scarce be any Suit of moment in the Island that some of these Persons, or their nearest Relations, are not concern'd in. From hence proceed the great disappointments that Merchants and others meet with from Factors and Agents, whom they imploy to sell Goods, or recover Money in that Island: For if such Agents, by prosecuting,



cuting, do disoblige those who have Power without Appeal in all Cases under 500 *l.* value, and who forcing them to an Appeal on greater Sums in their own Causes, may send them a Voyage of many thousand Leagues to *England*, and back again, to the loss of a Year or more time from their Business; it is plain, that unless such Factors and Agents are content to sacrifice their own Interest to serve others, they cannot do what is expected of them: And many are encouraged to betray their Trust, and defraud those that imploy them, by the great difficulty of having Justice against them in the Plantations. Many hundred instances can be given where Factors have laid out all the Effects of others (with which they have been intrusted) in purchasing Plantations for themselves; and then by proper Applications to Governours there, and to others in *England*, they are put into the Judicatories of the Places they live in; and those that entrusted them, can have no Justice against them, but what comes through their own hands; which discourages Merchants from imploying greater Sums in that Trade. And nothing is more plain, than that their depravity proceeds only from thence; for let them send Factors, Agents, or Servants, into any other part of the World, *Italy, Turkey, Muscovy, or the East-Indies*, they are no where found to degenerate so much from their original Honesty, and to give those that imploy them so much Cause to complain, as in the Plantations.

*Overseers of other Mens Plantations have been recommended by Governours, and their Masters rejected who sued for the same.*

From what has been observed it may appear, That the principal Root and Foundation of most Grievances in that Island, and the other Colonies, is, That Governours are not appointed capable of holding the said Courts, or that some other Persons fitly qualified are not appointed, only or principally depending on the King, and not subject to be removed at the pleasure of the Governours, by whom Justice might be administred, and matters of War and State might be the proper Province of Governors and their Council; which

*Even the French  
Islands have Civil as  
well as Military Go-  
vernours, and no Na-  
tion is without them  
but the English.*

which Judges, or Civil Magistrates, might on extra-ordinary Occasions be controuled by the Governour and Council, as is practised in the Colonies of all other Nations.

That such Regulation may be lawfully made, and without any new Charge to his Majesty, or his People, to the great Advantage of the Plantation Trade, and Benefit of his Majesty's Subjects, both in the Plantations, and in *England*, might easily be demonstrated; but since the printing of such a Scheme would prevent its being practised, and since Reformation is the Province of others, this matter is submitted to their Consideration.

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**F I N I S.**